

John P. Aldrich, Esq. (Resident Counsel)  
Nevada State Bar #6877  
Aldrich Law Firm, Ltd.  
7866 West Sahara Ave.  
Las Vegas, NV 89117  
Tel: (702) 853-5490  
jaldrich@johnaldrichlawfirm.com

*Liaison Counsel for [Proposed]  
Lead Plaintiff Carlos Marina*

Reed R. Kathrein (to be admitted *pro hac vice*)  
Lucas E. Gilmore (to be admitted *pro hac vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
reed@hbsslaw.com  
lucasg@hbsslaw.com

*Attorneys for [Proposed]  
Lead Plaintiff Carlos Marina*

[Additional counsel on signature page]

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TAD SCHLATRE, Individually and On  
Behalf Of All Others Similarly Situated,

Plaintiff,

v.

MARATHON DIGITAL HOLDINGS, INC.,  
f/k/a MARATHON PATENT GROUP, INC.,  
MERRICK D. OKAMOTO, FREDERICK G.  
THIEL, and SIMEON SALZMAN,

Defendants.

Case No.: 2:21-cv-02209-RFB-NJK

**CLASS ACTION**

**NOTICE OF MOTION AND  
MOTION TO APPOINT CARLOS  
MARINA AS LEAD PLAINTIFF,  
AND APPROVE HIS SELECTION  
OF LEAD COUNSEL;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**ORAL ARGUMENT REQUESTED**

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that class member Carlos Marina (“Movant” or “Mr.  
3 Marina”) by his counsel, will and hereby does respectfully move this Court for an order:  
4 (1) appointing Movant as Lead Plaintiff for the class pursuant to §21D(a)(3)(B) of the  
5 Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §78u-4(a)(3)(B)); and (2)  
6 approving his selection of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) as Lead  
7 Counsel and the Aldrich Law Firm, Ltd. as Liaison Counsel.  
8

9 This motion is based upon this motion, the supporting memorandum of points and  
10 authorities, the declaration of John P. Aldrich in support thereof, the pleadings and records  
11 in each of these actions and such other written or oral argument as may be presented to the  
12 Court.  
13

14 WHEREFORE, Movant respectfully request that the Court: (1) appoint Movant as  
15 the Lead Plaintiff pursuant to Section 21D(a)(3)(B) of the Exchange Act; (2) approve his  
16 selection of Lead and Liaison Counsel for the class; and (3) grant such other and further  
17 relief as the Court may deem just and proper.  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. PRELIMINARY STATEMENT**

This action is on behalf of all persons who purchased the publicly traded securities of defendant Marathon Digital Holdings, Inc. f/k/a Marathon Patent Group, Inc. (“Marathon” or the “Company”) between October 13, 2020 and November 15, 2021, both dates inclusive (the “Class Period”). The complaint alleges violations of sections 10(b) and 20(a) of the Exchange Act as amended by the Private Securities Litigation Reform Act of 1995 (“PSRLA”), 15 U.S.C. §§ 78j(b) and 78 (t)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

Pursuant to the PSLRA, Movant should be selected as lead plaintiff because, to the best of his knowledge, he has the largest financial interest in the relief sought by the class. In addition, Movant satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure because his claims are typical and he will fairly and adequately represent the class’ interests. In accordance with the PSLRA, Movant’s selection of Lead and Liaison Counsel should be approved.

### **II. BACKGROUND**

Marathon is a Nevada corporation with principal executive offices located in Las Vegas. The Company operates in the digital asset technology industry, mining for cryptocurrencies with a focus on the blockchain ecosystem and the generation of digital assets in U.S. The Company was formerly known as “Marathon Patent Group, Inc.” and changed its name to “Marathon Digital Holdings, Inc.” on March 1, 2021. The Company’s common stock trades on the Nasdaq Capital Market (“NASDAQ”) under the trading symbol “MARA.”

In October 2020, Marathon announced the formation of a new joint venture with Beowulf Energy LLC (“Beowulf”) purportedly focused on delivering low-cost power to

1 Marathon's Bitcoin mining operations (the "Beowulf Joint Venture"). In connection with  
2 that joint venture, Marathon entered into a series of agreements with multiple parties to  
3 design and build a data center in Hardin, Montana (the "Hardin Facility"), issuing 6 million  
4 shares of its common stock to the parties of those agreements.

5 The Complaint alleges that throughout the Class Period, Defendants made  
6 materially false and misleading statements regarding the Company's business, operations,  
7 and compliance policies. Specifically, Defendants misrepresented and omitted to disclose  
8 that: (i) the Beowulf Joint Venture, as it related to the Hardin Facility, implicated potential  
9 regulatory violations, including U.S. securities law violations; (ii) as a result, the Beowulf  
10 Joint Venture subjected Marathon to a heightened risk of regulatory scrutiny; (iii) the  
11 foregoing was reasonably likely to have a material negative impact on the Company's  
12 business and commercial prospects; and (iv) as a result, the Company's public statements  
13 were materially false and misleading at all relevant times.

14 The truth emerged on November 15, 2021, when Marathon disclosed that "the  
15 Company and certain of its executives received a subpoena to produce documents and  
16 communications concerning the Hardin, Montana data center facility[.]" and advised that  
17 "the SEC may be investigating whether or not there may have been any violations of the  
18 federal securities law."  
19

20 On this news, Marathon's stock price fell \$20.52 per share, or 27.03%, to close at  
21 \$55.40 per share on November 15, 2021.

22 As a result of Defendants' wrongful acts and omissions, and the precipitous decline  
23 in the market value of the Company's securities, Plaintiff and other Class members have  
24 suffered significant losses and damages.  
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### III. LEGAL ANALYSIS

#### A. The PSLRA's Lead Plaintiff Provisions

The Private Securities Litigation Reform Act (the "PSLRA") establishes the procedure for the appointment of lead plaintiffs in class actions under the Securities and Exchange Act of 1934. 15 U.S.C. § 78u-4(a)(1), (a)(3)(B)(i).

*First*, the plaintiff who initiated the action must publish notice to the purported class members, informing them of their right to file a motion for appointment of lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A).

*Second*, within sixty days of the notice publication, a member of the proposed class may move for the appointment of lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

Within ninety days after the publication of the notice, the Court shall consider any motion from a purported class member and shall appoint as lead plaintiff a member of the purported class that the court deems capable of adequately representing the class. 15 U.S.C. § 78u-4(a)(3)(A)(B). The Court must then determine the most adequate plaintiff. The PSLRA:

shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.<sup>1</sup>

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (the most capable plaintiff is the one with the greatest financial stake in the outcome

<sup>1</sup> 15 U.S.C. § 78u-4(a)(3)(B)(iii) (emphasis added); *Cavanaugh*, 306 F.3d at 729-30.

of the case and meets the requirements of Rule 23). The presumption may be rebutted upon proof that the “presumptively most adequate plaintiff ... will not fairly or adequately protect the interests of the class; or ... is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

The time period in which class members may move to be appointed lead plaintiff in this case expires on February 15, 2022.<sup>2</sup> Pursuant to the PSLRA’s provisions, and within the requisite time frame after publication of the required notice, Movant timely moved this Court to be appointed as lead plaintiff on behalf of all members of the class. In addition, he has selected and retained counsel experienced in the prosecution of securities class actions to represent him and the class.<sup>3</sup> Accordingly, Movant satisfies the PSLRA’s filing requirements and is entitled to have his application for appointment as lead plaintiff considered by the Court.

## **B. Movant Is the “Most Adequate Plaintiff”**

### **1. Movant Has the Largest Financial Interest in the Relief Sought by the Class**

Movant lost approximately \$473,905.41 in connection with his Class Period purchases of Marathon securities. To the best of his knowledge, this represents the largest known financial interest in the relief sought by the Class.

### **2. Movant Satisfies Rule 23**

When selecting lead plaintiffs and approving selection of counsel, the Court focuses on whether the movants seeking to be named as lead plaintiffs satisfy the “typicality” and “adequacy” prerequisites to class certification. *In re Cavanaugh*, 306 F.3d at 730. “Although the inquiry at this stage of the litigation is not as searching as the one triggered

<sup>2</sup> See 15 U.S.C. § 78u-4(a)(3)(A)-(B).

<sup>3</sup> See Aldrich Decl., Exs. B and C.

1 by a motion for class certification, the proposed lead plaintiff must make at least a  
2 preliminary showing that it meets the typicality and adequacy factor[s].” *Zhu v. UCBH*  
3 *Holdings, Inc.*, 682 F. Supp. 2d 1049, 1053 (N.D. Cal. 2010) (internal citation omitted). For  
4 the reasons below, Movant make the preliminary showings necessary to satisfy the  
5 typicality and adequacy requirements of Rule 23.  
6

7 **a. Movant is Typical**

8 Typicality is determined by “whether other members have the same or similar  
9 injury, whether the action is based on conduct which is not unique to the named plaintiffs,  
10 and whether other class members have been injured by the same course of conduct.” *Hanon*  
11 *v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal citation and quotation  
12 marks omitted). Under Rule 23’s “permissive standards, representative claims are typical if  
13 they are reasonably co-extensive with those of absent class members; they need not be  
14 substantially identical.” *Castillo v. Bank of Am., NA*, 980 F.3d 723, 729 (9th Cir. 2020)  
15 (internal citation and quotation marks omitted).  
16

17 Here, Movant’s claims are typical of the class. That is, Movant, like the other  
18 members of the Class, acquired Marathon securities during the Class Period and was  
19 damaged thereby. Thus, Movants’ claims are typical, if not identical, to those of the other  
20 members of the Class because the losses Movant seeks to recover are similar to those of  
21 other Class members and their losses result from the defendants’ common course of  
22 conduct. Accordingly, Movant satisfies Rule 23’s typicality requirement.  
23

24 **b. Movant is Adequate**

25 Class representatives must “fairly and adequately protect the interests of the class.”  
26 Fed. R. Civ. P. 23(a)(4). “The determination of adequate representation focuses around two  
27 questions: (1) whether the interests of the class representative coincide with those of the  
28

1 class, and (2) whether the class representative has the ability to prosecute the action  
 2 vigorously.” *Stocke v. Shuffle Master, Inc.*, 2007 WL 4262723, at \*3 (D. Nev. Nov. 30,  
 3 2007) (internal citations omitted).

4 Movant’s interests coincide with those of the other class members as Movant seeks  
 5 to hold Defendants liable for alleged violations of federal securities laws. Further, Movant  
 6 claims he will prosecute this action vigorously on behalf of the class and, to that end, he has  
 7 submitted a declaration attesting to his education history, occupation, and investment  
 8 experience, as well as to his understanding and commitment to fulfil the responsibilities and  
 9 duties of lead plaintiff. Aldrich Decl., Ex. E. Thus, Movant satisfies Rule 23’s adequacy  
 10 requirement.  
 11

#### 12 **C. Movant’s Choice of Counsel Should be Approved**

13 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject  
 14 to the Court’s approval. 15 U.S.C. ¶ 78u-4(a)(3)(B)(v). The Court should not disturb lead  
 15 plaintiff’s choice of counsel unless it is necessary to “protect the interests of the class.” 15  
 16 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); see also *Cavanaugh*, 306 F.3d at 734. Movant has  
 17 selected Hagens Berman as Lead Counsel for the class. Hagens Berman is actively  
 18 engaged in complex litigation and has successfully prosecuted numerous securities fraud  
 19 class actions on behalf of injured investors. Aldrich Decl., Ex. B.  
 20

21 If this motion is granted, Hagens Berman will provide members of the class with the  
 22 highest caliber of representation available. In addition, the Aldrich Law Firm, Ltd. has  
 23 ample experience in complex litigation in Nevada and throughout the country. *See, e.g.*,  
 24 *Daniels Fam. 2001 Revocable Tr. v. Las Vegas Sands Corp.*, 2021 WL 41301, at \*3 (D.  
 25 Nev. Jan. 5, 2021) (appointing the Aldrich Law Firm, Ltd. liaison counsel in securities class  
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1 action). Accordingly, the Court should approve Movant's selection of Lead Counsel and  
2 Liaison Counsel.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Movant respectfully requests that the Court: (1) appoint  
5 him as Lead Plaintiff; and (2) approve his selection of Hagens Berman as Lead Counsel and  
6 the Aldrich Law Firm, Ltd. as Liaison Counsel; and (3) grant such other and further relief  
7 as the Court may deem just and proper.  
8

9 DATED: February 15, 2022

ALDRICH LAW FIRM, LTD

10 By /s/ John P. Aldrich

11 John P. Aldrich, Esq.

12 NV Bar No. 6877

7866 West Sahara Ave.

13 Las Vegas NV 89117

Tel. 702.853.5490

14 Fax. 702.227.1975

Email: jaldrich@johnaldrichlawfirm.com

15 *Liaison Counsel for [Proposed] Lead Plaintiff*  
16 *Carlos Marina*

17 Reed R. Kathrein (to be admitted *pro hac vice*)

Lucas E. Gilmore (to be admitted *pro hac vice*)

18 HAGENS BERMAN SOBOL SHAPIRO LLP

715 Hearst Avenue, Suite 202

Berkeley, CA 94710

19 Telephone: (510) 725-3000

Facsimile: (510) 725-3001

20 reed@hbsslaw.com

lucasg@hbsslaw.com

21 Steve W. Berman (to be admitted *pro hac vice*)

22 HAGENS BERMAN SOBOL SHAPIRO LLP

1301 Second Avenue, Suite 2000

23 Seattle, WA 98101

Telephone: (206) 623-7292

24 Facsimile: (206) 623-0594

steve@hbsslaw.com

25 *Attorneys for [Proposed] Lead Plaintiff*

26 *Carlos Marina and [Proposed] Lead Counsel*  
27  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2022, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the email addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

**ALDRICH LAW FIRM, LTD.**

/s/John P. Aldrich  
John P. Aldrich, Esq.